

AN ORDINANCE providing for the indemnification of City of Fort Wayne Controllers, past or present, for legal fees and expenses incurred defending litigation seeking to hold said controller individually liable for the payment of public funds later determined to be inappropriate.

WHEREAS, the Indiana State Board of Accounts and Attorney General of Indiana appear to interpret various statutes as imposing strict liability on a municipal controller for the payment of expenditures from public funds later determined to be inappropriate;

WHEREAS, the Indiana appellate courts have consistently refused to hold a municipal controller strictly liable in such circumstances in the absence of fraud, malice, or willful misconduct;

WHEREAS, the Indiana Court of Appeals has expressed most recently its position as follows:

"We decline to hold that a controller is individually strictly liable - regardless of the absence of fraud or malice or willful misconduct or even negligence on his part - for any and all expenditures which are after-the-fact determined to be inappropriate. Such an imposition of potential liability would make the position of controller totally unattractive to all persons except those whose ineptness in financial matters had left them with only negligible personal assets. Instead, we hold that when a controller acts in good faith, reasonably believing that he has the authority to approve expenditure of the money for the stated purpose, he will not be held individually liable for the money if the expenditure is later determined to be inappropriate."

Knight v. City of East Chicago (1991), Ind.App., 569 N.E.2d 995,996, quoting State v. Newbern (1979), Ind.App., 398 N.E.2d 683,685-86;

WHEREAS, the Indiana State Board of Accounts and the Attorney General of Indiana continue to litigate strict liability claims against municipal controllers notwithstanding



1 the firm contrary stand of the Indiana appellate courts;

2 WHEREAS, indemnification against such strict  
3 liability claims is necessary to attract competent individuals  
4 to the position of Controller of the City of Fort Wayne;

5 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL  
6 OF THE CITY OF FORT WAYNE, INDIANA:

7 SECTION 1. Any past or present Controller of the  
8 City of Fort Wayne, Indiana, named as a defendant in  
9 litigation initiated by the State of Indiana, either through  
10 the State Board of Accounts or the Attorney General of  
11 Indiana, seeking to impose personal liability for the payment  
12 of public funds later determined to be inappropriate, shall be  
13 entitled to indemnification or reimbursement for all legal  
14 fees and expenses incurred in connection with the defense of  
15 such suit, subject to the limitations set forth herein.

16 SECTION 2. Said indemnification or reimbursement,  
17 however, shall be at an hourly rate for legal services that  
18 are equal to or less than the hourly rate established by this  
19 Council in the annual Salary Ordinance for extra ordinary  
20 services provided by the Corporation Counsel (City Attorney)  
21 applicable to the year in which the legal services are  
22 provided.

23 SECTION 3. In the event that a final judgment is  
24 entered against such an indemnified City Controller finding  
25 fraud, malice, willful misconduct or absence of good faith,  
26 the individual indemnified by this provision shall reimburse  
27 the City for all fees or expenses previously paid by the City.  
28 In addition, the City, by assuming an obligation to pay the  
29 cost of defense, does not assume any liability to pay any  
30 judgment entered against any indemnified controller.

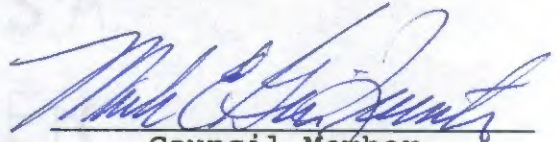
31 SECTION 4. The individual indemnified may select  
32 the Corporation Counsel (City Attorney) to represent that  
individual in such proceedings. In such cases, the  
Corporation Counsel (City Attorney) shall be compensated at  
the hourly rate for extra ordinary legal services provided for



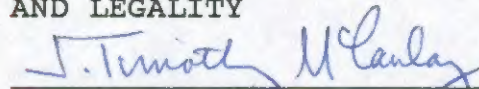
PAGE 3

in the applicable annual Salary Ordinance.

SECTION 5. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

  
Council Member

APPROVED AS TO FORM  
AND LEGALITY

  
J. Timothy McCaulay, City Attorney



Read the first time in full and on motion by \_\_\_\_\_ seconded by \_\_\_\_\_, and duly adopted, read the second time title and referred to the Committee on \_\_\_\_\_ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_, 19\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ .M., E.S.

DATED: \_\_\_\_\_

SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_ seconded by \_\_\_\_\_, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	9			
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GIAQUINTA	✓			
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 10-8-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. D-26-91 on the 8th day of October, 1991,

ATTEST  
Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

SEAL  
Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 9th day of October, 1991, at the hour of 2:00 o'clock P.M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 18th day of October, 1991, at the hour of 4:30 o'clock P.M., E.S.T.

PAUL HELMKE  
PAUL HELMKE, MAYOR



SUSPENSION OF RULES

BILL NO. G-91-10-21

COUNCILMEMBER GiaQuinta, MOVED TO SUSPEND THE RULES  
FOR THE PASSAGE OF BILL NO. G-91-10-21, AT THE COMMON COUNCIL  
MEETING OF THE CITY OF FORT WAYNE, INDIANA HELD ON THE 8th  
DAY OF October, 19 91, SAID MOTION WAS SECONDED BY  
COUNCILMAN Henry, AND DULY PASSED BY UNANIMOUS  
VOTE OF ALL LEGALLY ELECTED MEMBERS OF THE COMMON COUNCIL. THE ABOVE  
BILL NO. G-91-10-21 WAS THEN PLACED ON PASSAGE.

10-8-91  
DATED: \_\_\_\_\_

*Sandra E. Kennedy*  
SANDRA E. KENNEDY, CITY CLERK

*Samuel J. Talarico*  
PRESIDING OFFICER

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____
BRADBURY	<u>✓</u>	_____	_____	_____
BURNS	<u>✓</u>	_____	_____	_____
EDMONDS	<u>✓</u>	_____	_____	_____
GiaQUINTA	<u>✓</u>	_____	_____	_____
HENRY	<u>✓</u>	_____	_____	_____
LONG	<u>✓</u>	_____	_____	_____
REDD	<u>✓</u>	_____	_____	_____
SCHMIDT	<u>✓</u>	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,  
INDIANA ON 10-8-91, BILL NO. G-91-10-21

ATTEST:

(SEAL)

10-8-91  
DATED: \_\_\_\_\_

*Sandra E. Kennedy*  
SANDRA E. KENNEDY, CITY CLERK

DIGEST SHEET

TITLE OF ORDINANCE GENERAL ORDINANCE

DEPARTMENT REQUESTING ORDINANCE MAYOR'S OFFICE

SYNOPSIS OF ORDINANCE PROVIDES THE ABILITY TO ATTRACT  
COMPETENT INDIVIDUALS FOR THE POSITION OF CITY CONTROLLER.

*91-10-21*

EFFECT OF PASSAGE WILL ENCOURAGE COMPETENT PEOPLE TO APPLY FOR  
THE POSITION OF CITY CONTROLLER.

EFFECT OF NON-PASSAGE MAY DISCOURAGE COMPETENT PEOPLE FROM  
APPLYING FOR THE POSITION OF CITY CONTROLLER.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) NOT  
DETERMINED.

ASSIGNED TO COMMITTEE (PRESIDENT) \_\_\_\_\_